

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

BETTY WILSON,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	2:14cv1106-MHT
)	(WO)
STEVEN T. MARSHALL,)	
Alabama Attorney General,)	
et al.,)	
)	
Defendants.)	

OPINION AND ORDER

Pursuant to 42 U.S.C. § 1983, plaintiff, a state prisoner serving a sentence for capital murder, filed this lawsuit challenging the constitutionality of Alabama's DNA testing statute and the state court's denial of her efforts to obtain testing under that statute, and seeking orders requiring preservation of the evidence and allowing her to obtain independent DNA testing of the evidence from the crime scene. This lawsuit is now before the court on the recommendation of the United States Magistrate Judge that defendants' Federal Rule of Civil Procedure 12(b)(1) motion to

dismiss should be granted as to plaintiff's claims inviting the court to review state-court decisions, and should be otherwise denied; and that defendants' Rule 12(b)(6) motion to dismiss should be denied as her claim in Count I that Alabama's DNA law is facially unconstitutional, and should be granted as to her other claims. There are no objections to the recommendation. After an independent and de novo review of the record, the court concludes that the magistrate judge's recommendation should be adopted.

Accordingly, it is ORDERED that:

(1) The United States Magistrate Judge's recommendation (doc. no. 27) is adopted.

(2) Defendants' Rule 12(b)(1) motion to dismiss (doc. no. 8) is granted in part, and denied in part, as stated above and explained in the magistrate judge's recommendation.

(3) The claims in Counts I, II, III, and IV that invite the court to review state-court decisions are dismissed without prejudice.

(4) Defendants' Rule 12(b)(6) motion to dismiss (doc. no. 8) is denied as to plaintiff's claim in Count I that Alabama's DNA law is facially unconstitutional, and is granted as to her other claims.

(5) With the exception of plaintiff's claim in Count I that Alabama's DNA law is facially unconstitutional, Counts I, II, III and IV are dismissed without prejudice.

This case is not closed, and is referred back to the magistrate judge for further proceedings.

DONE, this the 17th day of October, 2018.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE